Lee Swee Fei v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R1–24–70 OF 1993
ABU MANSOR J
12 JANUARY 1994

Constitutional Law *— Preventive detention — Restricted residence order — Enquiry not held before order served — Whether special statutory format needs to be used to ask for enquiry*

Constitutional Law *— Preventive detention — Restricted residence order — Whether undue or inordinate delay in making order — Consideration of whether such order should be made only starts to run after 14-day period for appeal had lapsed*

The plaintiff was arrested and an order was made to restrict him to the town of Gemas for three years. After his arrest, the plaintiff was detained for 19 days in the Taiping Prison and he not given any opportunity to make an appeal to the first defendant to deny the charges against him or to request for an enquiry. The plaintiff is now seeking a declaration that the restricted residence order ('the order') was not valid and was of no effect and that the plaintiff need not abide by the order.

Held, dismissing the application:

(1) There is no special statutory format which the plaintiff need use to ask for an enquiry. Had he so much as made a one line request within the 14 days given to him, it would have been conveyed to the Minister. Here, the plaintiff never attempted to exercise that right to so ask.

(2) Where there is no time frame for such an order to be made, the Minister must issue the order with all convenient speed, which will depend on the facts of each case. It was reasonable to infer that any consideration of the issue of an order by the Minister can only be done after the period of 14 days had lapsed. After the lapse of the period of appeal, there must be notification to the Home Ministry that the plaintiff had asked for no enquiry. After the notification the Home Ministry would proceed to have the order prepared and signed and served on the plaintiff. In this case, there had been no undue or inordinate delay.

[Bahasa Malaysia summary

Plaintif telah ditangkap dan suatu perintah telah dibuat untuk menyekat beliau daripada meninggalkan pekan Gemas untuk tempoh tiga tahun. Selepas beliau ditangkap, plaintif telah ditahan selama 19 hari di Penjara Taiping dan beliau tidak diberi peluang untuk membuat

A rayuan kepada defendan pertama untuk menafikan tuduhan terhadapnya atau untuk meminta supaya suatu penyiasatan dijalankan. Sekarang plaintif meminta suatu deklarasi bahawa perintah kediaman terhad ('perintah itu') itu adalah tidak sah dan tidak berkesan dan plaintif tidak perlu mematuhi perintah itu.

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Diputuskan, menolak permohonan itu:

(1) Tidak terdapat format statutori yang khas yang perlu digunakan oleh plaintif untuk meminta supaya suatu penyiasatan diadakan. Jika beliau telah membuat permintaan, walaupun cuma sebaris, dalam tempoh 14 hari yang diberikan kepadanya, Menteri itu C akan diberitahu tentang permintaan itu. Di sini, plaintif tidak pernah cuba untuk menggunakan hak beliau untuk membuat permintaan sedemikian.

(2) Apabila tidak terdapat jangka masa yang tetap untuk membuat perintah itu, Menteri itu mesti mengeluarkan perintah itu dalam D masa yang sesuai, yang akan bergantung kepada fakta setiap kes. Adalah munasabah untuk membuat inferens bahawa sebarang pertimbangan isu mengenai suatu perintah Menteri hanya boleh dibuat selepas tempoh 14 hari telah luput. Selepas tempoh untuk membuat rayuan itu telah luput, Kementerian Dalam Negeri E akan diberitahu bahawa plaintif tidak meminta supaya suatu penyiasatan dijalankan. Selepas itu, Kementerian Dalam Negeri akan menyediakan perintah itu dan menandatangani dan menyampaikannya kepada plaintif. Di dalam kes ini, tidak terdapat kelewatan yang terlampau.]

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Notes

For cases on restriction orders, see 10 *Mallal's Digest* (4th Ed) paras 1111–1114; [1989] Mallal's Digest 1286–1287; [1990] Mallal's Digest 1016; and [1991] Mallal's Digest 1549–1552.

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Mah Weng Kwai (*Mah Weng Kwai & Associates*) for the plaintiff.
Mahmud Hj Abdullah (Senior Federal Counsel) for the defendant.

Cur Adv Vult

H **Abu Mansor J**: In an originating summons dated 16 August 1993, encl (2), the plaintiff is seeking a declaration that the restriction order dated 23 July 1993, restricting him to the town of Gemas, Negeri Sembilan was not valid and was of no effect. The plaintiff need not abide by said restriction order.

I The plaintiff filed an affidavit in support dated 4 August 1993 — encl (1). On 4 July 1993, he was arrested at 4.35pm at the Perak Race Course Club at Ipoh. He alleged that at the time of arrest, he was not immediately served with the warrant of arrest and the reasons for the arrest

(ie Borang dan Lamp A), both dated 26 June 1993 — 'LSF–1' and he was only served with the above two documents on 4 July 1993 at 6pm. A

After his arrest, he was detained in the Taiping Prison for 19 days — not in a civil prison — and he was not given any opportunity to make an appeal to the first defendant within 14 days, whether written or orally, to deny the charges against him and to request for an enquiry. No enquiry was held before he was served with an order on 23 July 1993. He verily believed that a person could make an appeal via a letter such as exhibited here, ie 'LSF–2'. B

On 23 July 1993, the first defendant informed him that he had been restricted to the town of Gemas, Negeri Sembilan for a period of three years. He alleged that there had been a delay since his arrest and detention and this was not in compliance with s 2(ii) of the Restricted Residence Ordinance 1933. He prays for an order in terms. C

I refused the plaintiff's application in this notis usul on two principal grounds, because I made a finding that he was given an opportunity to have an enquiry into his arrest and the possible issue of a detention and restriction order and he chose not to avail himself of that opportunity and the other, after due consideration, I also found that there had been no inordinate delay before the issue and service of the restricted residence order on him by the Deputy Minister of Home Affairs. D

At the outset of these proceedings, Mr Mah Weng Kwai made a preliminary objection to the four affidavits filed on behalf of the respondents, since they were just filed and served on him on 11 January 1994, when the plaintiff's application and affidavit in support had been served on the respondents as early as 20 September 1993. In doing so, the respondents thus breached O 32 r 13(2) of the Rules of the High Court 1980 (as amended by PU(A)192 of 1993) which came into force on 1 August 1993, the rule provides: E F

> Save as otherwise provided in these rules —
>
> (a) an affidavit intended to be used in support of an application must be filed and served on the other party within 14 days from the date of the filing of the application; and G
> (b) a party wishing to reply an affidavit served on him must file his affidavit and serve it on the other party within 14 days from the date on which the affidavit he intends to reply was served on him.

I upheld Mr Mah's preliminary objection and held that since the affidavits, including that of the Deputy Minister, were only not filed in 14 days, they were not served on the plaintiff in like time, the effect of which was that the court would still answer the questions posed as to whether the plaintiff had been validly detained, but it must answer that question by looking at only the evidence by way of affidavits and the circumstances of the case as a whole, without the benefit of the affidavits of the defendants, as they had not been filed and served in due time. H I

A On the first point raised by Mr Mah Weng Kwai, that the plaintiff had not been given an opportunity to request for an enquiry into his arrest and detention and subsequent order of restrictive residence issue, the court found that from the reverse of the exhibit Waran Tangkap Borang A in encl (1), filed by the plaintiff, there appears the endorsement as follows:

B Saya, Insp Abdul Malik bin Abu Bakar I/9430 telah menerangkan isi kandungan Waran tangkap dan tahan (Borang A) dan Alasan-alasan menangkap (Lamp A) dalam Bil KDN S RR 1860 bertarikh 26 Jun 1993, yang dikeluarkan oleh Dato' Megat Junid bin Megat Ayob, Timbalan Menteri Dalam Negeri, Malaysia, kepada Lee Swee Fei No KP (Baru): 500610–10–5223, No KP (Lama): 8056678 di bahagian bawah dalam bangunan Kelab Lumba Kuda Perak, pada 4 Julai
C 1993 jam 4.35 petang, dalam Bahasa Malaysia dan diterjemahkan dalam Bahasa Kantonis yang difahami olehnya melalui jurubahasa D/Kons 87505 Chan Chee Peng.

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Abdul Malik bin Abu Bakar Insp
D Pegawai Penyiasat Perjudian
Caw Pencegah Jenayah K/Gelap
Bandaraya Ipoh, Perak
Tarikh/Masa:
4 Julai 1993 4.35 petang.

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D/Kons 87505 Chan Chee Peng
Jurubahasa

Tarikh/Masa:
4 Julai 1993 4.35 petang.

E Saya, Lee Swee Fei, No KP (Baru): 500610–10–5223, No KP (Lama): 8056678 mengaku dan mengesahkan bahawa saya telah diberitahu isi kandungan Waran tangkap dan tahan (Borang A) dan Alasan-alasan menangkap (Lamp A) dalam Bil KDN S RR 1860 bertarikh 26 Jun 1993, yang dikeluarkan oleh Dato' Megat Junid bin Megat Ayob, Timbalan Menteri Dalam Negeri, Malaysia, dalam Bahasa Malaysia dan diterjemahkan dalam Bahasa Kantonis yang difahami oleh
F saya melalui jurubahasa D/Kons 87505 Chan Chee Peng pada 4 Julai 1993 jam 4.35 petang di bahagian bawah bangunan Kelab Lumba Kuda Perak. Saya juga mengesahkan bahawa saya telah menerima satu salinan Waran Tangkap Dan Tahan (Borang A) dan Alasan-Alasan Menangkap (Lamp A) tersebut pada 6 petang 4 Julai 1993 di pejabat Cawangan Pencegah Jenayah Kongsi Gelap IPDP Ipoh, Perak.

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Lee Swee Fei
No KP (Baru): 500610–10–5223
No KP (Lama): 8056678

—tt—
D/Kons 87505 Chan Chee Peng
Jurubahasa

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H Insp Abdul Malik bin Abu Bakar
Pegawai yang menyempurnakan
WTT

Then again in Lamp 'A' attached to Borang A, which was entitled 'Alasan-alasan menangkap Lee Swee Fei', there appeared as follows:

I 2 Jika kamu ingin membuat apa-apa rayuan untuk pertimbangan saya, kamu boleh berbuat demikian dalam masa 14 hari selepas menerima alasan-alasan ini.

The plaintiff did not deny that these documents were duly served on him, but he contended that he was not given an opportunity to ask for an enquiry. After his arrest, he was then kept in the Taiping Prison and no enquiry was ever held.

The court is entitled to assume that official acts were regularly done and I find no merit in the plaintiff's counsel's submission that he was not given an opportunity to ask for an enquiry. Counsel stressed that there must be a distinction between the plaintiff being informed of his rights and an opportunity given. I fail to see that.

I find there is no special statutory format which the plaintiff need use to ask for an enquiry. If he so much as made a one line request that he wants an enquiry to be held, in any letter in any paper, he can easily get from the prison officers. I have not the slightest doubt that if it was done within the 14 days given to him, it would have been conveyed to the Minister. I make a finding that our prison is not as archaic or old-fashioned as that and I make a finding that the plaintiff never attempted to exercise that right to so ask.

Then the second question was whether the Minister's order restricting him to Gemas had been validly made with all convenient speed. It has been well established in a case where a time frame has not been provided for such orders to be made, the Minister must issue the order with all convenient speed and what constitutes convenient speed must of course depend on the facts of each case.

In this present case, the complaint of the plaintiff was that the Minister had taken some 19 days before issuing and serving the restricted residence order on him. That, according to the plaintiff, was unreasonable delay.

It is the contention of the learned deputy that the defendants had not been guilty of any unreasonable delay. He submitted that just using the documents filed by the plaintiff and without the benefit of any affidavit of the Minister, it was clear that the plaintiff must be given 14 days in which to appeal from the time he was arrested at 4.35pm on 4 July 1993. After the lapse of that period of appeal of 14 days, there was only a balance of some five days before he was served with the restricted residence order ordering him to be restricted to Gemas. This is not disputed by the plaintiff.

In the absence of any affidavit from the Minister, the plaintiff's counsel submitted that there was evidence for this court to infer that there was inordinate delay in that, it took five days after the appeal period for the order to issue.

I find there is merit in the argument of the learned DPP, that there was no inordinate delay and that the restriction order was made with all convenient speed.

It is not for this court to shut its eyes to what had transpired. It is reasonable to infer that any consideration in the issue of a restricted residence order by the Minister can only be done after the period of 14 days had lapsed. After the lapse of the period of appeal, there must be notification

A or exchange between the Home Ministry either in the form of a letter or whatever, as to the fact that the plaintiff had asked for no enquiry.

It was only after the notification, there was no demand for an enquiry and acting on that, it was only then the Home Ministry could have duly proceeded to have the order prepared and for the Minister to have the order signed and for the plaintiff to be duly served. Taking all the administrative machinery into consideration for doing of all these which is not difficult to see, I find there has been no undue or inordinate delay. I find as a fact that there was convenient speed.

For the above reasons, I dismissed the plaintiff's application with costs.

C *Application dismissed.*

Reported by Jeanne Tan

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